



## LOCAL LAW POLICY

### LLP23 USING FOOTPATHS

Responsible Officer: <b>Manager Building, Planning &amp; Community Compliance</b>	Adoption Date:	09/09/2016
	Approved By:	Council
	Review Date:	2019
	Authorising Officer: <b>Director Development Services</b>	Policy Type

#### INTRODUCTION

The Local Law No. 1 of 2014 Community Amenity (Amendment) was adopted by the Council of the Rural City of Wangaratta on 16 September 2014.

This provision of the Local Law should be read in conjunction with the general provisions 1-9 of the Local Law.

#### CONTEXT

The primary purpose of this policy is to provide guidance for safe footpath use by all users. Council is required to comply with provisions of the *Federal Disability Discrimination Act (1992)*. A clear path of sufficient width is needed for all, and in addition some pedestrians need to use the building walls for guidance along the path.

#### SCOPE

This policy applies to all persons seeking to use a footpath or other public places for commercial activity, including the placing of free standing advertising signs, display of goods, provision of outdoor eating facilities and associated furniture and equipment. The policy applies to such activity and removable items on all footpaths and public places throughout the municipality. Please note, permanent structures on footpaths will require further permits and permissions (see clause 9).

#### PURPOSE

Council has a legal responsibility for the regulation of commercial activities in public places. Council is committed to ensuring safe access and navigation for users along footpaths and other public places in conjunction with meeting the requirements of the *Federal Disability Discrimination Act (DAA) 1992 Section 23*.

The purpose of this policy is to

- Maintain clear, safe and unobstructed access for users of all abilities on footpaths and other public places;
- Encourage consistent footpath activity which contributes positively to the amenity, vibrancy and viability of commercial areas;
- Maintain a degree of uniformity and equity in the extent of footpath use'
- Reduce potential driver distraction and vision obstruction through controlled use of advertising signage and placement of items; and
- Provide clear guidance for the consideration of applications for permits made pursuant to the Rural City of Wangaratta Local Law No. 1 or the Wangaratta Planning Scheme (as applicable), for the placement of items associated with footpath activity on footpaths and other public spaces in the municipality.

## LOCAL LAW

Local Law No.1 of 2014 Community Amenity (Amendment):-

### **9. Activities and Uses Requiring a Permit**

- 1) A permit must be obtained from Council before a person carries out the following uses or activities; (n) using footpaths for activities.
- 2) A person who fails to obtain a permit is guilty of an offence against Local Law No.1 of 2014 Community Amenity (Amendment).

#### **Penalty: 2 Penalty Units**

- 3) A person must comply with:
  - (a) any conditions of a permit; and
  - (b) any additional requirements or limitations that this Local Law applies to the use or activity.

#### **Penalty: 2 Penalty Units**

- 4) The Council may grant exemptions from any other requirements or limitations that this Local Law applies to the use or activity.
- 5) In deciding whether to grant a permit the Council may take into consideration any of the criteria listed in clause 9 of the Local Law No.1 of 2014 Community Amenity (Amendment) or criteria listed in this Policy.

### **23. Using Footpaths (further requirements)**

Where a person uses a footpath to provide outdoor eating facilities or for the display of goods or for the placing of free standing advertising signs, the requirements in the Council's *Community Amenity Local Law No. 1 - Local Laws Policies* must be complied with.

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<b>DEFINITIONS</b>	(also refer to attached On-Street Dining Drawing)
<b>Footpath</b>	Area between the boundary line and the kerb line. In the absence of a kerb, Council unit will determine extent of footpath.
<b>Footpath Activity</b>	Refers to commercial activities and associated goods located on the footpath and other public places requiring Council approval or a permit, encompassing such things as outdoor dining, associated furniture, free standing advertising signs, temporary barriers, gas heaters, umbrellas, equipment and display of goods.
<b>Pedestrian Zone</b>	A zone along the frontage of the premises, extending a prescribed minimum of 1.8m from the property line. This clear zone is needed for a consistent path of pedestrian access. It also allows for two people using wheelchairs, scooters, other mobility devices, and prams to pass each, and wheelchair manoeuvrability. This clear zone also allows for persons to use walls for guidance and support.
<b>Kerb Zone</b>	A zone along the kerb or parking space opposite the premises, extending a minimum of 0.7m from the kerb or relevant parking line, to allow clearance for vehicle overhang and access to vehicles. This zone may be reduced at intersections with Council approval, subject to clear vision being maintained for vehicles and pedestrians.
<b>Activity Zone</b>	A remaining area of the footpath or other public places, being the only zone where Free Standing Advertising Signs and items defined in Footpath Activity are placed, subject to a Footpath Activities Permit and limits and restrictions set out in this policy.
<b>Vertical Zone</b>	A zone extending a minimum of 2m vertical clearance to avoid injury to pedestrians from any standing or hanging item.
<b>Gas Heaters</b>	Includes patio heaters and radiant panel heaters.
<b>Outdoor Dining</b>	Refers to the use of an area of the footpath or public places, approved by Council, for the purposes of providing food and drink services to customers holding an outdoor dining permit. The approved area is located in the activity zone of the footpath.
<b>Display of Goods</b>	Means a table or any other structure used for the purpose of and including the display of goods for sale. This may also include a selection of goods that may not be for sale, e.g. flowers, plants, planters, shrubs placed on the footpath.
<b>Temporary Barrier</b>	A removable barrier of maximum height of 900mm used to define outdoor dining and/or activity areas.
<b>Free Standing Advertising Signs</b>	A single or double sided free standing advertising sign.

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This policy applies to the use of footpaths and public space for the placing of free standing advertising signs, display of goods, temporary barriers, gas heaters, umbrellas, equipment and tables and chairs for footpath activity.

Unless otherwise exempt, all free standing advertising signs, display of goods, temporary barriers, gas heaters, umbrellas, equipment and tables and chairs used for footpath activity must relate directly to the business activity conducted on the adjacent property.

1. A permit for items of free standing advertising signs, display of goods, temporary barriers, gas heaters, umbrellas, equipment and tables and chairs for footpath activity may be issued subject to conditions as determined by Council and subject to the following requirements:
  - a) No more than one (1) advertising sign will be allowed per premises or ten [10] metres of frontage; and/or
  - b) The desired number of such items used for footpath activity must fit within the Activity Zone. These items must be set back to allow room within the Activity Zone for persons to browse display of goods and move around all items. Clearances must be provided to allow persons to access between the Pedestrian Zone and the Kerb Zone.
  - c) When using the Activity Zone, a clearance of 1m must be maintained to allow access to other infrastructure such as hydrants, parking machines, postal boxes, pedestrian ramps, seating etc. including tactile ground surface indicators.
  - d) The layout of desired items in the Activity Zone must be modified where necessary to allow adequate sight lines for pedestrians and motorists as necessary, for example, at corners and pedestrian crossings.
  - e) All freestanding advertising signs must not be larger in size than one [1] metre square on each side.
  - f) All such items used for footpath activity must be fabricated from durable materials and be of solid and stable construction, braced and regular in shape and with no uneven projections.
  - g) All such items used for footpath activity must only be placed on hard standing areas such as concrete, asphalt, brick or other approved surfaces and generally have a cross slope of not greater than 5%.
  - h) All such items used for footpath activity must only be displayed during the activity hours of the business.
  - i) All such items used for footpath activity must be designed and placed to ensure that they do not constitute a tripping hazard or obstruction to footpath traffic and are properly secured, while being removable outside of activity hours.
  - j) No free standing advertising signs or other furniture will be allowed to be placed in median strips.
  
2. Tables and chairs that are fitted with sunshades or umbrellas must be designed and placed so that neither table nor umbrella could create a hazard at any time to any

person using the road or footpath because of the design or stability of the furniture or any other reason. Umbrellas, shade sails, gas heaters or similar vertically placed objects must provide a minimum clear height of 2 metres above the pedestrian pavement.

3. The owner/occupier of any premises which has a permit for the display of free standing advertising signs, temporary barriers, gas heaters, umbrellas, equipment or display of goods, and/or tables and chairs for footpath activity must ensure that public liability insurance is maintained at all times indemnifying the Council, and where appropriate, the Roads Corporation, from any action that may arise from accidents involving any such items used for footpath activity. The level of this insurance shall be in accordance with the approved level stated in the permit. Proof of this insurance must be provided upon request by an authorised officer.
4. The permit holder must maintain procedures to ensure public spaces are not littered and litter is not introduced to gutters or drains. The permit holder must dispose of all waste and litter in an approved manner.
5. No advertising will be allowed to be placed on any traffic lights, road traffic signs or other regulatory signs or Council street furniture.
6. Free standing advertising signs when displayed by real estate agents, must:
  - a) only be displayed on the day of any auction or open house if advertising an auction or open house.
  - b) only be displayed on the footpath or nature strip and placed 0.7m from the kerb outside any property to be auctioned or opened to the public.
7. The application for a Footpath Activities Permit will be assessed having regard to the following:
  - Width of footpath
  - Speed of traffic adjacent to the outdoor dining area
  - Proximity of the dining area or other items to the traffic lane
  - Proximity of the dining area or other items to intersections
  - Type of parking (if any) permitted adjacent to the dining area
  - Accident history of the area
  - Presence of street furniture, safety barriers, bollards, trees etc.
  - Clearance requirement for street furniture
  - Distance from bus zones and taxi ranks
  - Clearance and access requirements for pedestrians
  - Position of bicycle paths
  - Details and information submitted in the application and associated plans.
  - Form and condition of proposed items

The granting or issue of a permit will be assessed having regard to the Local Law and Council may determine to grant or refuse a permit or alternatively, grant a permit subject to the implementation of certain safety and amenity measures.

8. In the event that safety measures are considered necessary, a risk assessment must be undertaken to determine the measures required to protect the safety of patrons of any outdoor dining area. The risk assessment should take into account the design and placement of any structures, bollards etc. considered for installation.
9. A permanent structure or installation will be discouraged on footpaths and public areas unless it is demonstrated that these will ensure safety, compliance with DAA requirements and improve the public realm by improving the streetscape appearance and/or providing weather protection. It is the responsibility of the owner/occupier of any premises to contact Council's Technical Services or Planning and Building units for advice, or to discuss any proposal prior to the lodgement of an application. A permanent structure or installation existing on footpaths before 31 May 2015 will be allowed to remain in place providing a formal process of risk assessment and approval has commenced with Council. Without approval, permanent structures or installations will not be allowed to remain on footpaths and public areas.
10. In areas of low pedestrian activity (generally outside the Wangaratta CBD), a 1.8m Pedestrian Zone is desirable but in some cases, a 1.5m Pedestrian Zone may be considered where trading could occupy up to 75% of the frontage area as this allows spaces for pedestrians to pass. Any variation must be proposed by an applicant and will be considered as part of a formal application for a Footpath Activity Permit.
11. In non-standard streetscape areas such as intersections, interim measures or variations from the standard will be considered on a case by case basis to allow for footpath trading while maintaining the Pedestrian Zone along the building line. A variation in Kerb Zone can be considered depending on vehicle access and parking arrangements. Any variation must be proposed by an applicant and will be considered as part of a formal application for a Footpath Activity Permit.
12. Use of footpaths for trading or dining will not be permitted if the Pedestrian Zone is less than 1.5m wide.
13. When using the Activity Zone, a clearance of 1 metre must be maintained to allow access to other infrastructure such as hydrants, parking machines, postal boxes, pedestrian ramps, seating etc.
14. The permit holder must display the current Footpath Activities Permit and accompanying plan in the window of the premises nearest the display area.

## RESPONSIBILITIES

Preparation of application for Footpath Activities Permit	Applicant
Approval of Permit	Technical Services Unit
Issue of Permit	Building, Planning & Community Compliance Unit
Enforcement	Building, Planning & Community Compliance Unit
Decision - Appeals	Review Panel
Maintaining documentation	Building, Planning & Community Compliance Unit

## MANAGEMENT FRAMEWORK

Appeal of a refusal to grant a Footpath Activities Permit must be made in writing. Appeals will be considered by Council's Review Panel. This Panel meets monthly and comprises three members of Council's Senior Management Team, including the Director Development Services or the Manager Building, Planning & Community Compliance.

## REPORTING

As required, the Review Panel may submit a report on the effectiveness of a particular Local Law and associated Local Law Policy. An Annual Report will be submitted to the Audit Advisory Committee detailing demand for Local Laws Permits and implementation of the Local Law Policy.

## OTHER INTEGRATION ARRANGEMENTS

Officers will liaise with other Road Authorities, as appropriate.

## REFERENCES

*Federal Disability Discrimination Act 1992.*

Australian Standard AS 1428 Parts 1 & 2.

AustRoads Guide to Traffic Engineering Practice: Pedestrians.

AS/NZS 4565:2004 Radiant Gas Heaters for Outdoor and Non-residential Use.

AS/NZS 1596:2002 Storage and Handling of LP Gas.

Civic Mutual Plus Circular – Footpath trading Activities (October 2008).

## REVIEW

Any change or update which materially impacts and alters this policy must be by CEO approval following review by the Audit Advisory Committee. Otherwise, this policy will be reviewed annually by the Audit Advisory Committee at a basic level and once every three years at a detailed level. The Annual Review must be included in the Committee's calendar in conjunction with a scheduled Committee Meeting. Following the detailed review, recommendations will be made to the CEO.